

 ORIGINAL

cc: AJS(s)
OGC
CADRS
Pwb

RECEIVED

2015 SEP -2 AM 10: 01

BEFORE THE FEDERAL MARITIME COMMISSION

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

<p>GENERAL MOTORS LLC,</p> <p style="text-align: center;">Complainant,</p> <p style="text-align: center;">v.</p> <p>NIPPON YUSEN KABUSHIKI KAISHA; WALLENIUS WILHELMSSEN LOGISTICS AS; EUKOR CAR CARRIERS INC.,</p> <p style="text-align: center;">Respondents.</p>

Docket No. 15-08



COMPLAINT

I. COMPLAINANT

Complainant General Motors LLC ("GM") is a Delaware limited liability company with its principal place of business at 300 Renaissance Center in Detroit, Michigan. General Motors LLC is one of the world's largest automobile original equipment manufacturers ("OEM"), manufacturing new assembled cars, trucks, and other motor vehicles through brands such as Chevrolet, Buick, GMC, Cadillac, Baojun, Holden, Isuzu, Jiefang, Opel, Vauxhall, and Wuling. In July 2009, General Motors LLC acquired all the claims, unless specifically excluded, of the former General Motors Corporation, which was then known as Motors Liquidation Company.

From February 1, 1997 through at least September 31, 2012 (the "Conspiracy Period"), therefore, GM either purchased Vehicle Carrier Services (defined below) sold by providers of Vehicle Carrier Services, including Respondents and their co-conspirators, or acquired the claims held by the former General Motors Corporation with respect to the claims advanced in this complaint. As a direct result of Respondents' and their co-conspirators' secret agreement and/or agreements in violation of 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41103(a)(1) and (2), 41104(10), 41105(1) and (6), and 46 CFR § 535.401, *et seq.*, GM has been injured in its business and property because that conspiracy artificially inflated the prices it paid for Vehicle Carrier Services during the Conspiracy Period.

During the Conspiracy Period, GM negotiated and entered into contracts for Vehicle Carrier Services to and from the United States and elsewhere in the world. These negotiations and procurement decisions were conducted or made in the United States, including in the Detroit, Michigan, area.

II. RESPONDENTS

1. NYK Line

Respondent Nippon Yusen Kabushiki Kaisha ("NYK Japan") is a Japanese company with its principal place of business at 3-2, Marunouchi 2 Chome, Chiyoda-Ku, Tokyo, 100-0005, Japan. NYK Japan has subsidiaries acting as its agents in the United States, including in Secaucus, New Jersey. NYK Japan, directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled, shipped Vehicles into and out of the United States during the Conspiracy Period. NYK Japan, directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled, also provided, marketed and/or sold Vehicle Carrier Services throughout the United States during the Conspiracy Period.

In addition to Respondent NYK Japan, who operated as a common carrier, there were parents, subsidiaries, and/or affiliates of NYK Line that helped facilitate and implement the secret agreement and/or agreements. Co-conspirator NYK Line (North America) Inc. ("NYK America") is a wholly-owned subsidiary of NYK Japan, with its principal place of business at 300 Lighting Way, Secaucus, New Jersey 07094. NYK America acts as Respondent NYK Japan's agent in the United States. At all times during the Conspiracy Period, NYK America's activities in the United States were under the control and direction of NYK Japan, which controlled its policies, sales, and finances.

NYK Japan and NYK America (collectively, "NYK Line"), directly or through their wholly-owned and/or controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

2. **WWL**

Respondent Wallenius Wilhelmsen Logistics AS (“WWL Norway”) is a Norwegian company with its principal place of business at Strandveien 12, No-1366 Lysaker, Norway. WWL Norway is a joint venture between Wallenius Lines AB and Wilh. Wilhelmsen ASA, and operates most of those companies’ vessels. WWL Norway is the contracting party in customer contracts for Vehicle Carrier Services, including those with GM.

In addition to Respondent WWL Norway, who operated as a common carrier, there were parents, subsidiaries, and/or affiliates of WWL that helped facilitate and implement the secret agreement and/or agreements. Co-conspirator Wallenius Wilhelmsen Logistics Americas LLC (“WWL America”) is a wholly-owned subsidiary of WWL Norway, with its principal place of business at 188 Broadway, Woodcliff Lake, New Jersey 07677. WWL America acts as Respondent WWL Norway’s agent in the United States. At all times during the Conspiracy Period, WWL America’s activities in the United States were under the control and direction of WWL Norway, which controlled its policies, sales, and finances.

During the Conspiracy Period, WWL Norway and WWL America (collectively, “WWL”), directly or through their wholly-owned and/or controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

3. **EUKOR**

Respondent EUKOR Car Carriers Inc. (“EUKOR”) is a South Korean company with its principal place of business at 24th Floor, Gangnam Finance Center, 152 Teheran-ro, Gangnam-gu, Seoul, South Korea, 135-984. EUKOR is a common carrier, and is a joint venture: Wallenius Lines AB owns 40 percent, Wilh. Wilhelmsen ASA owns 40 percent, and Hyundai Motor Company and Kia Motors Corporation own 20 percent. EUKOR has offices throughout the United States, including at Bridge Plaza North #430, Fort Lee, New Jersey 07024. During the Conspiracy Period, EUKOR, directly or through its wholly-owned subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

4. Other Co-Conspirators and Agents

Co-conspirator Compañía Sud Americana de Vapores S.A. ("CSAV Chile") is a Chilean company with its principal place of business at Calle Sotomayor 50, Valparaiso, Chile. In addition to CSAV Chile, who operated as a common carrier, there were parents, subsidiaries, and/or affiliates of CSAV Chile that helped facilitate and implement the secret agreement and/or agreements. Co-conspirator CSAV Agency North America, LLC ("CSAV America") is a wholly-owned subsidiary of CSAV Chile, with its principal place of business located at 99 Wood Avenue South, 9th Floor, Iselin, New Jersey 08830. CSAV America acts as co-conspirator CSAV Chile's agent in the United States and CSAV America's activities in the United States were under the control and direction of CSAV Chile, which controlled its policies, sales, and finances. During the Conspiracy Period, CSAV Chile and CSAV America (collectively, "CSAV"), directly or through their wholly-owned and/or controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

Co-conspirator Kawasaki Kisen Kaisha, Ltd. ("K' Line Japan") is a Japanese company with its principal place of business at 1-1, Uchisaiwaicho 2-chome, Chiyoda-ku, Tokyo 100-8540, Japan. In addition to "K" Line Japan, who operated as a common carrier, there were parents, subsidiaries, and/or affiliates of "K" Line Japan that helped facilitate and implement the secret agreement and/or agreements. Co-conspirator "K" Line America, Inc. ("K' Line America") is a wholly-owned subsidiary of "K" Line Japan with its principal place of business at 8730 Stony Point Parkway, Richmond, Virginia 23235. "K" Line America acts as co-conspirator "K" Line Japan's agent in the United States and "K" Line America's activities in the United States were under the control and direction of "K" Line Japan, which controlled its policies, sales, and finances. During the Conspiracy Period, "K" Line Japan and "K" Line America (collectively, "K' Line"), directly or through their wholly-owned and/or controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

Co-conspirator Mitsui O.S.K. Lines, Ltd. ("MOL Japan") is a Japanese company with its principal place of business at 1-1 Toranomom 2-chome, Minato-ku, Tokyo, 105-8688, Japan. In addition to MOL Japan, who operated as a common carrier, there were parents, subsidiaries, and/or affiliates of MOL Japan that helped facilitate and implement the secret agreement and/or agreements. Co-conspirator Mitsui O.S.K. Bulk Shipping (USA), Inc. ("MOBUSA") is a wholly-owned subsidiary of MOL Japan, incorporated in New Jersey, with its principal place of business at Harborside Financial Center, Plaza Five, Suite 1710, Jersey City, New Jersey 07311. Co-conspirator World Logistics Service (U.S.A.), Inc. ("WLS") is a wholly-owned subsidiary of MOL Japan, with its principal place of business at 111 West Ocean Blvd., Suite 1040, Long Beach, California 90802. Co-conspirator Nissan Motor Car Carrier Co., Ltd. ("NMCC") is a Japanese company with its principal place of business at 1-2-2 Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan. NMCC is a common carrier, and is a joint venture. Since 2009, MOL Japan owns 70 percent, co-conspirator Höegh owns 20 percent, and Nissan Motor Co., Ltd. owns 10 percent. From 1998 to 2009, MOL Japan owned 40 percent and Nissan Motor Co., Ltd. owned 60 percent. At all times during the Conspiracy Period, NMCC's activities in the United States were under the control and direction of MOL Japan, which controlled its policies, sales, and finances. During the Conspiracy Period, MOL Japan, MOBUSA, WLS, and NMCC (collectively, "MOL"), directly or through their wholly-owned and/or controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

Co-conspirator Höegh Autoliners AS ("Höegh AS") is a wholly-owned subsidiary of Höegh Autoliners Holdings AS with its principal place of business at P.O. Box 4, Skøyen, 0212, Oslo, Norway. Höegh AS is the contracting party in customer contracts for Vehicle Carrier Services, including those with GM. In addition to Höegh AS, who operated as a common carrier, there were parents, subsidiaries, and/or affiliates of Höegh AS that helped facilitate and implement the secret agreement and/or agreements. Co-conspirator Höegh Autoliners Holdings AS ("Höegh Holdings") is a Norwegian company with its principal place of business in Oslo,

Norway. Co-conspirator AUTOTRANS AS ("AUTOTRANS") is a wholly-owned subsidiary of Höegh Holdings with its principal place of business at 177 Av. des Grésillons, 92230 Gennevilliers, France. Co-conspirator Höegh Autoliners, Inc. ("Höegh Inc.") is a wholly-owned subsidiary of Höegh AS with its principal place of business at 2615 Port Industrial Drive, Jacksonville, Florida 32226. During the Conspiracy Period, Höegh Inc.'s principal place of business was located at 50 Jericho Quadrangle, Suite 210, Jericho, New York. Co-conspirator Alliance Navigation LLC ("Alliance") is a wholly-owned affiliate of Höegh Inc. with its principal place of business at 2615 Port Industrial Drive, Jacksonville, Florida 32226. During the Conspiracy Period, Höegh Holdings, Höegh AS, AUTOTRANS, Höegh Inc., and Alliance (collectively, "Höegh"), directly or through their wholly-owned and/or controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

Various other individuals, persons, partnerships, sole proprietors, firms, corporations, and entities, some identified and some not yet identified, participated as co-conspirators in the violations alleged herein and performed acts and made statements in furtherance thereof. GM reserves the right to name some or all of these individuals, firms, and corporations as Respondents. When GM establishes the identities of such co-conspirators, GM will seek leave to amend this complaint to add such co-conspirators as Respondents. These other co-conspirators are believed to include, without limitation, Cido Car Carrier Services Ltd. ("Cido"), Glovis Co., Ltd., Grimaldi Compagnia di Navigazione, and Compañía Chilena de Navegación Interoceánica, Toru Otda, Hiroshige Tanioka, and Takashi Yamaguchi of co-conspirator "K" Line, and Susumu Tanaka of Respondent NYK Line.

Whenever reference is made in this Complaint to any act, deed, or transaction of any corporation or limited liability entity, the allegation means that the corporation or limited liability entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's or limited liability entity's business or affairs.

Each Respondent acted as the principal, agent, or joint venturer of, or for, other Respondents and co-conspirators with respect to the acts, violations, and common course of conduct alleged herein. Each Respondent that is a subsidiary or affiliate of a foreign parent acts as the United States agent for Vehicle Carrier Services provided by its parent company.

III. JURISDICTION

The Federal Maritime Commission ("FMC") has jurisdiction over this Complaint under the Shipping Act of 1984, 46 U.S.C. § 40101 *et seq.*, ("the Shipping Act"). This Complaint alleges that Respondents have entered into a secret, unfiled, and not yet effective and/or unlawful agreement and/or agreements to allocate customers, raise and fix prices, and rig bids in violation of the Shipping Act. These statutory violations include, but are not limited to 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41103(a)(1) and (2), 41104(10), 41105(1) and (6), and 46 CFR § 535.401, *et seq.*

The activities of Respondents and their co-conspirators, as described herein, involved United States import trade or import commerce and/or were within the flow of, were intended to, and did have a direct, substantial, and reasonably foreseeable effect on United States domestic and import trade or commerce. Respondents' illegal conduct involved United States import trade or import commerce, particularly insofar that Respondents and their co-conspirators transported Vehicles (defined below) for importation to the United States. Respondents' and their co-conspirators' conspiracy also directly and substantially affected the price of Vehicle Carrier Services purchased by GM in the United States for the transport of GM Vehicles to and from ports in the United States and elsewhere in the world. In particular, Respondents' and their co-conspirators' conspiracy directly and adversely affected the prices of Vehicle Carrier Services that GM purchased in the United States.

The Commission has jurisdiction over each Respondent named in this action. Each is a "common carrier" and "ocean common carrier" as defined in the Shipping Act. 46 U.S.C. § 40102 (6) and (17). Their concerted and conspiratorial actions, described herein, are within the scope of activity governed by the Shipping Act. 46 U.S.C. § 40301(a). Respondents and their

co-conspirators purposefully availed themselves of the laws of the United States, particularly insofar as they provided Vehicle Carrier Services to customers at ports in the United States. Respondents' and their co-conspirators' conspiracy affected this commerce in Vehicle Carrier Services in United States commerce.

IV. MATTER OF THE COMPLAINT

The circumstances that form the basis for this Complaint are as follows:

1. Nature of the Action

A. Respondents and their co-conspirators are the largest providers of deep sea vehicle transport services ("Vehicle Carrier Services," described more fully below) in the world. From at least February 1, 1997 through at least September 31, 2012 (the "Conspiracy Period"), the exact start and end date of the conspiracy unknown to GM at this time, Respondents and their co-conspirators conspired and secretly agreed to overcharge their customers for Vehicle Carrier Services. They conspired and secretly agreed to rig bids, allocate customers, restrain capacity, and to otherwise fix, raise, stabilize, and maintain prices for Vehicle Carrier Services for shipments to and from the United States and elsewhere in the world. Pursuant to this secret agreement and/or agreements to rig bids, allocate customers, restrain capacity, and to otherwise fix, raise, maintain, and stabilize prices, Respondents and their co-conspirators engaged in a series of integrated and overlapping anticompetitive acts. For nearly two decades, this conspiracy affected the market for all Vehicle Carrier Services. GM was damaged because it paid higher prices for Vehicle Carrier Services than it would have paid in a competitive market as a direct result of Respondents' and their co-conspirators' violations of the Shipping Act. GM is seeking reparations for these damages. Respondents' agreement and/or agreements were never filed with the Federal Maritime Commission.

B. Competition authorities across the globe, including in the United States, European Union, Canada, Japan, Chile, and South Africa have been actively investigating—and continue to investigate—Respondents' and their co-conspirators' illegal conduct with respect to Vehicle Carrier Services. Several Respondents and co-conspirators have already confessed to their role

in this conspiracy. In the United States, the amnesty applicant has been cooperating with the U.S. Department of Justice ("DOJ") after seeking amnesty for participating in this cartel. In addition, Respondent NYK Line and co-conspirators CSAV and "K" Line (defined above) have all pleaded guilty to violating the antitrust laws for conspiring to suppress and eliminate competition by allocating routes, rigging bids, and fixing prices for Vehicle Carrier Services to and from the United States. So far, the Respondents and their co-conspirators have paid over \$136 million in criminal fines in the United States alone. Respondent NYK Line and co-conspirators MOL, CSAV, and "K" Line have also paid over \$4 million in civil penalties to the Federal Maritime Commission. Many of the Respondents and their co-conspirators have also been fined by the Japanese, Chilean, and South African competition authorities. None of these fines have compensated the victims of their illegal activities, including GM.

C. GM is a United States company that, during the Conspiracy Period, purchased hundreds of millions of dollars of Vehicle Carrier Services directly from providers of Vehicle Carrier Services, including Respondents and their co-conspirators, for the transportation of new assembled motor vehicles to and from ports in the United States and elsewhere in the world. During the Conspiracy Period, GM also negotiated and entered into contracts for tens of millions of dollars of Vehicle Carrier Services with providers of Vehicle Carrier Services, including Respondents and their co-conspirators, for the transportation of new assembled motor vehicles to and from ports in the United States and elsewhere in the world, that are still in effect after the end of the Conspiracy Period. As a direct, substantial, and reasonably foreseeable result of Respondents' and their co-conspirators' unlawful conduct and unfiled agreement and/or agreements to allocate markets, rig bids, restrain capacity, and to otherwise fix, raise, maintain, and stabilize the prices of Vehicle Carrier Services, the prices of Vehicle Carrier Services purchased by GM were artificially inflated. Thus, GM suffered damages as a result of Respondents' and their co-conspirators' violations of the Shipping Act, and brings this action for reparations on account of the Vehicle Carrier Services it purchased at artificially-inflated prices

during the Conspiracy Period, as well as any lingering effects of the conspiratorial conduct alleged herein.

D. GM brings this action to recover double reparations and for Respondents' and their co-conspirators' violations of the Shipping Act under 46 U.S.C. § 41305(c). Additionally, GM seeks to recover the costs of suit, including reasonable attorneys' fees, for the injuries that GM suffered as a result of Respondents' and their co-conspirators' violations of the Shipping Act.

2. **The Market for Vehicle Carrier Services**

E. Vehicle Carrier Services involve transporting any type of wheeled freight on large, ocean-shipping vessels on deep-sea routes. New assembled cars, trucks, and other motor vehicles ("Vehicles") are the majority of the freight shipped using Vehicle Carrier Services. During the Conspiracy Period, GM shipped Vehicles—including new assembled cars and trucks—using Vehicle Carrier Services.

F. The conduct at issue relates to deep sea services. Deep sea services transport Vehicles between continents; short sea services transport equipment over shorter distances and can enter smaller ports. Routes for deep sea services tend to be organized along a line, with vessels sailing in a rotation and visiting a sequence of ports.

G. Vehicle Carrier Services involve the use of specialized vessels equipped with ramps such that wheeled freight can be rolled on or rolled off of the vessels, as opposed to other types of cargo ships that typically use cranes to load and unload cargo. The term "RoRo" is often used to refer to these vessels ("RoRo Vessels") or to the transport of vehicles on such vessels ("RoRo Shipping"). As used herein, "Vehicle Carrier Services" refers to the paid ocean transportation of Vehicles by RoRo.

H. There are two types of RoRo Vessels: (1) Pure Car Carriers, which are designed exclusively for the movement of passenger cars (and possibly small trucks) and have a fixed layout; and (2) Pure Car and Truck Carriers, which are designed to carry cars and trucks and equipped with hydraulics that can move the decks within the RoRo Vessel to enable the vessel to

carry vehicles of varying sizes. Due to its size and design, a single RoRo Vessel is typically capable of carrying many thousands of Vehicles at a time.

I. There are no reasonable substitutes from Vehicle Carrier Services for shipping Vehicles over deep seas.

J. GM arranges for the international ocean transportation of its Vehicles, and purchases such services directly from providers of Vehicle Carrier Services, including Respondents and their co-conspirators (or from any current or former subsidiary or affiliate of any Respondent or co-conspirator), for shipping Vehicles to and from the United States and elsewhere in the world.

3. Respondents' and their Co-Conspirators' Anticompetitive Conduct

K. Since at least 1997, Respondents and their co-conspirators have engaged in a continuous and wide-ranging conspiracy to restrain competition for the sale of Vehicle Carrier Services. Respondents and their co-conspirators have secretly agreed to rig bids and fix prices for Vehicle Carrier Services and restrict the supply of Vehicle Carrier Services. Respondents' and their co-conspirators' conspiracy has resulted in higher prices of Vehicle Carrier Services for shipments to and from the United States and elsewhere in the world. Indeed, this pervasive and global conspiracy forced GM to pay supracompetitive prices for the Vehicle Carrier Services it purchased.

L. Because Respondents' and their co-conspirators' agreement and/or agreements were secret in nature, and because Respondents and their co-conspirators took steps to conceal their anticompetitive agreement and/or agreements, GM cannot yet know all the ways that Respondents and their co-conspirators conspired. On information and belief, GM alleges that Respondents and their co-conspirators engaged in acts in furtherance of their conspiracy in addition to those specifically alleged in this Complaint, and that such additional acts also violated the Shipping Act.

M. The anticompetitive conduct was facilitated by executives, including high-ranking executives and executives with pricing and bidding authority at each of the Respondents and their co-conspirators.

N. These executives had regular, often daily, conversations with each other regarding each carrier's business, shipping volumes, bids, and other sensitive customer information. Whenever an executive left his position, he would explain to his successor about the importance of, and need to continue, regular contact with competitors. As a result, the new executives would continue these contacts with competitors to discuss competitively sensitive information and agree to further the ends of the conspiracy.

a. **Respondents and their co-conspirators agreed to rig bids or allocate customers for vehicle carrier services**

O. Respondents and their co-conspirators frequently met or otherwise communicated regarding bids for Vehicle Carrier Services, and agreed to rig bids for Vehicle Carrier Services submitted to their customers, including GM. These rigged bids were submitted in response to a customer's request for quotation.

P. Such acts directly targeted GM. Respondents and their co-conspirators rigged bids on GM tenders during the Conspiracy period.

Q. In the Vehicle Carrier Services industry, the term "respect" refers to bid-rigging or customer allocation agreements, which include refraining from bidding for Vehicle Carrier Services, submitting intentionally high bids for Vehicle Carrier Services, or offering Vehicle Carrier Services with terms or conditions that made the offer less attractive.

R. Respondents' and their co-conspirators' longstanding practice in the Vehicle Carrier Services industry was to rig bids by "respecting" each conspirator's incumbent business, for all customers and routes in the United States and elsewhere during the Conspiracy Period.

S. The bid-rigging permeated the Vehicle Carrier Services industry, and affected GM tenders during the Conspiracy Period. When GM issued a tender for Vehicle Carrier Services, Respondents and their co-conspirators would discuss and agree that the incumbent

would retain the business. They often agreed on what prices each should bid for GM's Vehicle Carrier Services business, in an attempt to insure that the incumbent won the business.

T. Some limited examples of these secret bid-rigging or customer allocation agreements for Vehicle Carrier Services include, *inter alia*:

- a. According to the Chilean antitrust authorities, from at least 2000 through at least 2012, NYK Line agreed to "respect" CSAV's Vehicle Carrier Services business for GM for routes between the United States and Chile.
- b. In 2001 or 2002, GM issued a tender for Vehicle Carrier Services business to Japan. MOL asked WWL to "respect" the MOL business. WWL agreed to "respect" MOL's business with GM to Japan.
- c. In 2002, executives from NYK Line and MOL agreed that NYK Line would bid higher than MOL for GM Vehicle Carrier Services business from the United States to Japan. MOL provided NYK Line the amount MOL was planning to bid, and NYK Line agreed to bid higher than that amount.
- d. According to the Competition Tribunal of South Africa, from 1999 through 2012, Respondents and their co-conspirators colluded on tenders issued by OEM manufacturers including GM.

U. The following are additional examples of Respondents' and their co-conspirators' secret agreements not to compete for OEM customers in Vehicle Carrier Services by rigging bids or allocating customers for Vehicle Carrier Services:

- a. In 2001, MOL and Höegh agreed to allocate the transportation of vehicles from the United States to the Middle East. MOL was not the incumbent and wanted this business. Executives, including from MOL and Höegh, discussed and agreed that Höegh would not bid in exchange for MOL agreeing to use Höegh RoRo Vessels on the route if it won the business. MOL won the business and then used Höegh's RoRo Vessels, as agreed.

- b. From at least 2001 to at least 2009, NYK Line agreed to “respect” CSAV’s Vehicle Services business with an OEM customer for routes between the United States and Chile. CSAV, from at least 2011 to at least 2012, agreed to “respect” NYK Line’s Vehicle Services business for that same OEM customer on those same routes.
- c. From at least 2001 to at least 2012, NYK Line agreed to “respect” CSAV’s Vehicle Carrier Services business for another OEM customer for routes between the United States and Chile.
- d. In 2002 or 2003, MOL, WWL, and Höegh agreed to rig the bid to an OEM customer for Vehicle Carrier Services. After the customer issued a tender for transporting its vehicles from Europe to the United States, executives from MOL approached executives from WWL about the customer’s business from Thailand to Europe. WWL was the incumbent on the route from Europe to the United States, and MOL wanted to obtain the business from Thailand to Europe. MOL and WWL agreed that MOL would not compete for WWL’s route from Europe to the United States, and in exchange, WWL would not compete with MOL in MOL’s attempt to obtain the Thailand to Europe business. In furtherance of this agreement, WWL gave MOL a price to bid as part of the tender for Europe to the United States. Similarly, MOL and Höegh agreed that Höegh would not compete with MOL in MOL’s attempt to obtain the Thailand to Europe business, and in exchange MOL would not compete for Höegh’s business on routes from the United States to Africa and the Middle East.
- e. In 2004, MOL and WWL agreed to rig bids with respect to two OEM customers. MOL and WWL agreed that WWL would not compete with MOL for MOL business in the transport of one of the OEM customer’s vehicles from South Africa to the United States, and in exchange MOL would not compete for WWL’s

business in the transport of both OEM customers' vehicles from Europe to the United States.

- f. In 2008 or 2009, MOL and "K" Line agreed to rig the bids for an OEM customer's business. MOL was the incumbent for transporting that OEM customer's vehicles from the United States to South Africa. "K" Line agreed that "K" Line would bid a higher rate than MOL did for this business, and in exchange MOL agreed to not compete for "K" Line's business from the United States to Brazil and Argentina.
- g. From at least 2008 to 2009, CSAV agreed to "respect" NYK Line's Vehicle Carrier Services business for another OEM customer for routes between the United States and Chile. From at least 2011 to at least 2012, NYK Line agreed to "respect" CSAV's Vehicle Carrier Services business for that same OEM customer on the same routes.
- h. In 2010, CSAV and MOL agreed that MOL would not compete for CSAV's business to transport an OEM customer's vehicles from the United States to Colombia from 2010 to 2012; in furtherance of this agreement, CSAV gave MOL a price to bid.
- i. In August 2011, MOL, NYK Line, and "K" Line agreed to rig the bids for the shipment of an OEM customer's trucks and buses from Japan to the United States. All three companies were incumbent carriers on the route, with NYK Line having the largest share. They agreed what amount of business each company would seek and at what rates. They further agreed that if any of the three companies did not obtain the specified business, the others would share some of the business that they won. NYK Line coordinated the agreement between the companies and provided each with the rates to bid.
- j. In February or March of 2012, executives from MOL and WWL met in person and agreed that MOL would not compete for WWL's business transporting

vehicles from the United States to China, and in exchange, WWL would not pursue business transporting an OEM customer's vehicles from the United States to Korea. In furtherance of this agreement, WWL gave MOL a price to bid on the United States to China route, and MOL gave WWL a price to bid on the United States to Korea route.

V. This pervasive scheme to rig the bids submitted to GM and other OEM customers for Vehicle Carrier Services caused prices to be inflated across the Vehicle Carrier Services industry. The purchase price that GM paid for Vehicle Carrier Services on shipments to and from the United States and elsewhere in the world during the Conspiracy Period was artificially inflated by Respondents' and co-conspirators' secret bid-rigging or customer allocation agreements.

b. **Respondents conspired to fix, raise, or artificially maintain prices for Vehicle Carrier Services**

W. Respondents and their co-conspirators also met periodically throughout the Conspiracy Period and secretly agreed on the prices to charge for Vehicle Carrier Services.

X. Respondents and their co-conspirators specifically targeted GM in these secret price-fixing agreements. They discussed and agreed the amount and timing of the price increase, and sought agreement and support from other Respondents and their co-conspirators to insure they would be able to implement the price increase.

Y. Examples of these secret agreements to fix, raise, or artificially maintain prices for Vehicle Carrier Services include, *inter alia*:

- a. Beginning in February 1997, MOL, NYK Line, and "K" Line met multiple times at MOL's offices in Tokyo to discuss the upcoming renewal of an OEM customer's contract for Vehicle Carrier Services. Representatives from MOL, NYK Line, and "K" Line agreed that each would ask customers for a price increase for the shipment of vehicles from Japan to the United States and from the United States to Japan;

- b. Around 2002 or 2003, MOL and "K" Line were both shipping vehicles from Europe to North America and agreed to each request a 3 percent to 5 percent price increase;
- c. In late 2007, an OEM customer issued a tender for shipments of vehicles from Europe to the United States; executives from MOL and "K" Line discussed the tender and agreed to request a price increase from the customer;
- d. In late 2007 and early 2008, executives from MOL, NYK Line, and "K" Line met multiple times to try to obtain a 10 percent price increase for Vehicle Carrier Services from their OEM customers, including GM. For example, executives from NYK Line and MOL met in November 2007 and agreed to increase pricing for Vehicle Carrier Services in 2008. They also agreed to convince "K" Line to increase its rates. The following month, executives from MOL and NYK Line had dinner in a restaurant in Tokyo and discussed seeking price increases in 2008. On or about January 11, 2008, the same executives from MOL and NYK Line had lunch with a representative from "K" Line and agreed to a goal of a 5 percent increase in 2008. On or about January 22, 2008, executives from MOL, NYK Line, and "K" Line agreed on a target of a 10 percent price increase for 2008 in order to obtain at least a 5 percent increase in 2008. They further agreed that each of the three companies would approach its principal OEM customers and initially ask for a 10 percent price increase for Vehicle Carrier Services. MOL, NYK Line, and "K" Line then proceeded to approach their OEM customers as agreed, and they obtained price increases;
- e. In fall 2008, executives from MOL, NYK Line, and "K" Line communicated and agreed to seek a certain price increase for Vehicle Carrier Services. These executives further agreed that NYK Line and "K" Line would share an OEM customer's business from Japan to the west coast of the United States, and that

NYK Line, "K" Line, and MOL would share the OEM customer's business from Japan to the East Coast of the United States; and

- f. In November 2011, executives from MOL and Höegh met for dinner and discussed and agreed upon Vehicle Carrier Services rates from New York to West Africa, a route on which they both offered services.

Z. Respondents' and their co-conspirators' secret agreements to fix, raise, or artificially maintain the price of Vehicle Carrier Services resulted in artificially high prices paid by GM for Vehicle Carrier Services on shipments to and from the United States and elsewhere in the world during the Conspiracy Period.

c. Respondents and their co-conspirators conspired to reduce Vehicle Carrier Services fleet capacity

AA. During the Conspiracy Period, Respondents' and their co-conspirators' executives also had frequent communications regarding reducing Vehicle Carrier Services capacity, and they reached secret agreements concerning capacity reduction. These capacity reductions, and the higher prices that resulted from them, were an effect of Respondents' and their co-conspirators' conspiracy and were not caused by natural market forces.

BB. Respondents and their co-conspirators reduced capacity by agreeing to scrap and layup vessels. Scrapping refers to destroying a vessel by breaking it up and selling the pieces for scrap. A layup occurs when a vessel is taken out of commission but not scrapped. Scrapping and layups have the same effect on capacity.

CC. During the Conspiracy Period, Respondents and their co-conspirators discussed scrapping vessels, vessel layups, and plans for building new vessels. In connection with those discussions, Respondents and their co-conspirators reached secret agreements to control or reduce capacity, which resulted in artificially inflated prices for Vehicle Carrier Services for shipments to and from the United States and elsewhere in the world.

DD. For instance, from the late 1990s through 2002, executives from MOL, "K" Line, NYK Line, Höegh, and WWL, met twice a year—once in Japan and once in Europe—to discuss

and agree on vessel scrapping and building plans and to exchange data. They also discussed Vehicle Carrier Services pricing for routes where they believed prices were particularly low. These Respondents continued their data exchange into at least 2003. These discussions and agreements were intended to control or reduce capacity, and to otherwise fix, raise, maintain, and stabilize prices for Vehicle Carrier Services for shipments to and from the United States and elsewhere in the world.

EE. In 2008, demand for Vehicle Carrier Services fell dramatically as a result of the worldwide financial crisis, leaving Respondents and their co-conspirators with excess capacity. In response, Respondents and their co-conspirators met and conspired, as they had been doing for years, to reduce the supply of Vehicle Carrier Services to ensure that their prices were insulated from these changes in market conditions. They were able to maintain artificially inflated prices by engaging in a number of illegal acts, including the following:

- a. In late 2008 or early 2009, executives from MOL and NYK Line met and secretly agreed to reduce their respective fleet sizes by scrapping RoRo Vessels. They also secretly agreed to resist price reduction requests from customers;
- b. "K" Line likewise secretly agreed to scrap some of its vessels after being approached by MOL or NYK Line;
- c. During late 2008 to early 2009, MOL also discussed fleet reductions and reached understandings concerning such reductions, with at least WWL, Höegh, and EUKOR;
- d. Per their understandings with MOL, WWL, EUKOR, NYK Line, "K" Line, and Höegh also secretly agreed to reduce the supply of Vehicle Carrier Services by engaging in cold layoffs¹;
- e. As a result of Respondents' and their co-conspirators' secret agreements, MOL, NYK Line, "K" Line, and Höegh all reduced their respective capacities, all of

¹ In a "cold layup," the vessel sits idle without a crew and is not maintained.

which was intended to artificially increase prices for Vehicle Carrier Services;
and

f. Almost no orders for new vessels were placed between 2009 and 2011.

FF. The Respondents' and their co-conspirators' secret agreements to control or reduce capacity through vessel scrapping and layups resulted in artificially high prices paid by GM for Vehicle Carrier Services on shipments to and from the United States and elsewhere in the world during the Conspiracy Period.

4. Government Investigations Targeting Respondents and Co-Conspirators

GG. Competition authorities in the United States, Canada, Mexico, Japan, the European Union, Chile, and South Africa have been actively investigating anticompetitive practices with respect to Vehicle Carrier Services.

HH. Several Respondents and their co-conspirators have paid civil penalties to this Commission. On December 23, 2013, the Federal Maritime Commission announced compromise agreements with Respondent NYK Line and co-conspirator "K" Line. In that announcement, the Commission announced that NYK Line agreed to pay \$1,225,000 in civil penalties and that "K" Line agreed to pay \$1,100,000 in civil penalties to settle allegations that each violated 46 U.S.C. § 41102(b) respect to Vehicle Carrier Services.

II. On February 12, 2014, co-conspirators Mitsui O.S.K. Lines Ltd. and Nissan Motor Car Carrier Co., entered into a compromise agreement with the Commission where they agreed to pay \$1,275,000 in penalties to settle allegations that it violated 46 U.S.C. § 41102(b) with respect to Vehicle Carrier Services.

JJ. On March 5, 2014, the Commission announced that it had entered into a compromise agreement with co-conspirator CSAV Chile. In this agreement, CSAV Chile agreed to pay a \$625,000 penalty to settle allegations that it violated 46 U.S.C. § 41102(b) with respect to Vehicle Carrier Services.

KK. In addition to these fines by the FMC, a grand jury has been convened in Baltimore, Maryland, to investigate alleged anticompetitive conduct involving Vehicle Carrier Services and has issued subpoenas to certain of the Respondents and co-conspirators.

LL. In early September 2012, the Japan Fair Trade Commission (“JFTC”), the European Commission (“EC”), and the DOJ carried out raids and unannounced inspections at the offices of a number of the Respondents and co-conspirators, including at least CSAV, NYK Line, MOL, “K” Line, and WWL; Höegh, EUKOR, and NMCC are also being investigated for the same unlawful conduct.

MM. On or about May 1, 2014, CSAV pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for conspiring to suppress and eliminate competition for Vehicle Carrier Services to and from the United States from as early as January 2000 through at least September 2012. In pleading guilty, CSAV specifically admitted that the conspiracy affected certain U.S.-based manufacturers of cars and trucks. CSAV agreed to pay a criminal fine of \$8.9 million.

NN. On or about November 17, 2014, “K” Line pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for conspiring to suppress and eliminate competition for Vehicle Carrier Services to and from the United States and elsewhere from as early as February 1997 through at least September 2012. In pleading guilty, “K” Line specifically admitted that the conspiracy affected certain United States-based manufacturers of cars and trucks. “K” Line agreed to pay a criminal fine of \$67.7 million.

OO. On or about March 11, 2015, NYK Line pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for conspiring to suppress and eliminate competition for Vehicle Carrier Services to and from the United States and elsewhere from at least February 1997 through at least September 2012. In pleading guilty, NYK Line specifically admitted that the conspiracy affected certain United States-based manufacturers of cars and trucks. NYK Line agreed to pay a criminal fine of \$59.4 million. Further, in pleading guilty, NYK Line’s corporate representative expressed NYK Line’s “deepest regret” that its employees engaged in serious

misconduct and violated the antitrust laws, and informed the Court that NYK Line took “full responsibility” for its employees’ conduct which violated United States law.

PP. The criminal informations filed by the DOJ against CSAV, “K” Line, and NYK Line further state that, during the relevant period, CSAV, “K” Line, NYK Line and their co-conspirators attended meetings and engaged in communications regarding bids and tenders in which they agreed to allocate customers by not competing for each other’s existing routes; they agreed to not compete against each other on tenders by not bidding or agreeing to the prices they would bid on such tenders; they discussed and exchanged prices so as to not undercut each other’s pricing on tenders; they submitted bids in accordance with agreements reached; and they provided Vehicle Carrier Services to and from the United States and elsewhere at collusive and non-competitive prices.

QQ. Several executives from “K” Line and NYK Line have been indicted on similar charges. On or about January 30, 2015, “K” Line employee Hiroshige Tanioka pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for participating in the conspiracy from at least April 1998 until at least April 2012. Mr. Tanioka was sentenced to serve an 18-month prison term and to pay a criminal fine of \$20,000. On or about February 6, 2015, “K” Line employee Takashi Yamaguchi also pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for participating in the conspiracy from at least April 1998 until at least April 2012. Mr. Yamaguchi was sentenced to serve a 14-month prison term and to pay a criminal fine of \$20,000. On or about March 26, 2015, “K” Line employee Toru Otoda pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for participating in the conspiracy from at least November 2010 until at least September 2012. Mr. Otoda was sentenced to serve an 18-month prison term and to pay a \$20,000 criminal fine.

RR. On or about March 10, 2015, NYK Line employee Susumu Tanaka pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for participating in the conspiracy from at least April 2004 until at least September 2012. Mr. Tanaka was sentenced to serve a 15-month prison term and to pay a \$20,000 criminal fine.

SS. On or about March 18, 2014, the JFTC issued cease and desist orders and fines totaling \$223 million against NYK Line, “K” Line, WWL, and NMCC, finding that they violated Article 3 of Japan’s Antimonopoly Act with regard to Vehicle Carrier Services. Although the JFTC named MOL as a violator, it exempted MOL from these sanctions because it accepted MOL into its leniency program.

TT. The JFTC’s investigation revealed that, among other things, NYK Line, “K” Line, MOL, WWL, and NMCC, from at least as early as mid-January 2008 to September 6, 2012, agreed to fix freight rates and/or colluded on freight rate quotations, and refrained from bidding against one another for the purpose of securing incumbent trades. The JFTC specifically found that, among others, routes between ports in the United States and Japan were impacted by these Respondents’ conduct.

UU. On the same day the JFTC announced its cease and desist orders and fines, MOL issued a press release offering its “sincere apologies” to its customers and the public and pledging to make “best efforts to prevent any recurrence” of its unlawful conduct, to further enhance its compliance structure, and to regain public confidence. In view of the seriousness of MOL’s unlawful conduct, MOL also disciplined at least its Chairman, President, and Senior Executive Officer responsible for its Vehicle Carrier business.

VV. That same day, “K” Line also issued a statement expressing its “sincere regret” for its unlawful conduct, and vowing to “take comprehensive measures to ensure strict compliance with all applicable laws and regulations.” In light of the gravity of “K” Line’s unlawful conduct, its CEO and the Directors and Executive Officers in charge of its Vehicle Carrier business decided to return 10-30% of their monthly compensation for a period of three months. NYK Line also issued a press release apologizing for its unlawful conduct.

WW. On or about January 27, 2015, Chile’s Fiscalía Nacional Económica (“FNE”) filed an injunction with the Tribunal de Defensa de la Libre Competencia (“TDLC”), requesting that the TDLC impose fines on “K” Line, MOL, NYK Line, and EUKOR for violating Article 3 of Chile’s Decree Law No. 211 by agreeing to allocate customers for Vehicle Carrier Services.

Although the FNE found that CSAV participated in such conduct, the FNE asked that CSAV's fine be waived because CSAV met the FNE's requirements for leniency.

XX. The FNE's investigation uncovered, among other things, that NYK and CSAV agreed to allocate customers for Vehicle Carrier Services for routes between America and Chile. This agreement was reached during in-person meetings in the United States, as well as through e-mails and telephone calls. As part of this agreement, NYK and CSAV agreed, from 2000 to at least 2012, to allocate GM's Vehicle Carrier Services business for routes between America and Chile to CSAV.

YY. On or about August 13, 2015, the Competition Tribunal of South Africa ("CTSA") entered into a consent agreement with WWL. That consent agreement states that on September 11, 2012, the CTSA filed a complaint against Respondents and their co-conspirators for price fixing and market division in violation of section 4(1)(b)(i) and (ii) of the Competition Act, Act No. 89 of 1998, as amended. The CTSA filed an amended complaint on August 20, 2013 to include allegations of collusive tendering practices that violated section 4(1)(b)(iii) of the same act.

ZZ. The South African investigation revealed that from 1999 until September 2012, Respondents and their coconspirators agreed to fix prices, divide markets and collude on tenders issued by vehicle, equipment, rolling construction and agricultural machinery manufacturers in routes to and from South Africa. GM was specifically listed as a victim of these violations. In the consent agreement, WWL admitted to conduct that constituted price fixing, market division, and collusive tendering.

5. Respondents and Co-Conspirators Engaged in Anticompetitive Conduct in Other Transportation Markets

AAA. Respondents and their co-conspirators participate in additional transportation markets, such as container shipping, bulk shipping, and freight forwarding. The affiliates and subsidiaries of a number of Respondents and their co-conspirators have recently pled guilty and

agreed to pay millions of dollars in fines for violating the antitrust laws in other transportation markets.

BBB. In 2007, the United States and European Union launched an investigation into price fixing among international air freight forwarders, including the affiliates and subsidiaries of certain Respondents and their co-conspirators. The JFTC investigated as well.

CCC. On March 19, 2009, the JFTC ordered twelve companies to pay \$94.7 million in fines for violations of Japan's Antimonopoly Act. Included among the twelve companies were "K" Line Logistics, Ltd., Yusen Air & Sea Services Co., and MOL Logistics (Japan) Co., Ltd.

DDD. "K" Line Logistics, Ltd. is a subsidiary of Respondent "K" Line Japan, Yusen Air & Sea Services Co. is a subsidiary of Respondent NYK Japan, and MOL Logistics (Japan) Co., Ltd. is a subsidiary of Respondent MOL Japan.

EEE. The JFTC concluded that the companies had, over a five-year period, met and agreed to, among other things, the amount of fuel surcharges, security charges, and explosive inspection charges that they would charge their international air freight forwarding customers. The agreements were, according to the JFTC, negotiated at meetings of the Japan Air Cargo Forwarders Association.

FFF. On September 30, 2011 in the United States, co-conspirator MOL Japan's subsidiary, MOL Logistics (Japan) Co., Ltd., pleaded guilty to Sherman Act violations related to price fixing.

GGG. On March 28, 2012, the European Union fined fourteen international groups of companies, including Respondent NYK Japan's subsidiary, Yusen Shenda Air & Sea Service (Shanghai) Ltd., a total of \$219 million for their participation in the air cargo cartels and for violating European Union antitrust rules.

HHH. On March 8, 2013, the DOJ announced that Respondent "K" Line's subsidiary, "K" Line Logistics, Ltd., and Respondent NYK Japan's subsidiary, Yusen Logistics Co., Ltd., agreed to pay criminal fines of \$3,507,246 and \$15,428,207, respectively, for their roles in a conspiracy to fix certain freight forwarding fees for cargo shipped by air from the United States

to Japan. "K" Line Logistics, Ltd. and Yusen Logistics Co., Ltd. pleaded guilty to meeting with co-conspirators, agreeing to what freight forwarding service fees should be charged on air cargo shipments, and actually levying those fees on its customers from about September 2002 until at least November 2007.

6. Susceptibility of Vehicle Carrier Services to Collusion

III. Vehicle Carrier Services are particularly susceptible to collusion because of high concentration, the commodity-like nature of the services at issue, high barriers to entry, inelasticity of demand, and ample opportunities for the Respondents and their co-conspirators to meet and secretly collude.

a. Concentration

JJJ. The Vehicle Carrier Services market is highly concentrated. During the Conspiracy Period, Respondents and their co-conspirators alone accounted for roughly two-thirds or more of the global capacity of Vehicle Carrier Services.

b. Commodity-Like Services

KKK. Vehicle Carrier Services are homogenous, commodity-like services. Each Respondent and co-conspirator has the capability to provide the same or similar Vehicle Carrier Services. Purchasers of Vehicle Carrier Services choose providers almost exclusively based on price, because the qualitative differences between each provider are negligible. Thus, from GM's perspective, providers of Vehicle Carrier Services are essentially interchangeable.

LLL. The homogenous and interchangeable nature of Vehicle Carrier Services makes it easier to create and maintain an unlawful conspiracy, agreement, or cartel because coordinating conduct and rigging bids, as well as policing those collusively-set prices, is less difficult than if Respondents and their co-conspirators had distinctive services that could be differentiated based upon features other than price.

c. Barriers to Entry

MMM. There are substantial entry barriers that a new provider of Vehicle Carrier Services would face. A new entrant would encounter significant hurdles, including multi-million

dollar start-up costs associated with acquiring ships and equipment, distribution infrastructure, and hiring skilled labor and a sales force.

NNN. Transporting Vehicles without damage across oceans requires highly-specialized and sophisticated equipment, resources, and industry knowledge. The ships that make such transport possible are highly-specialized, and feature high sides, multiple interior decks, and no container cargo space. These characteristics restrict the use of the ships to the Vehicle Carrier Services market. A new entrant into the business would face costly and lengthy start-up costs, including multi-million dollar costs associated with manufacturing or acquiring a fleet of RoRo Vessels and other equipment, energy, transportation, distribution infrastructure and skilled labor. The estimated capital cost of a RoRo Vessel can range from \$95 million to \$180 million.

OOO. Additionally, the nature of the Vehicle Carrier Services industry requires the establishment of a network of routes to serve a particular set of customers—OEMs—with whom Respondents have established long-term relationships. The existence of these established routes and long-term contracts increases switching costs for customers and presents an additional barrier to entry.

PPP. The Vehicle Carrier Services market also involves economies of scale and scope, which present further barriers to entry:

- a. Economies of scale exist where firms can lower the average cost per unit through increased production, since fixed costs are shared over a larger number of units. Fuel accounts for a significant amount of all operational costs for providers of Vehicle Carrier Services. However, providers of Vehicle Carrier Services are less sensitive to fuel prices than other modes of transportation, providing opportunities to exploit economies of scale. As fuel prices increased in the last 5-10 years, market participants were incentivized to increase the average size of vessels. This reflects the presence of economies of scale, because fuel costs did not increase proportionally as vessel size grew.

- b. Economies of scope exist where firms achieve a cost advantage from providing a wide variety of products or services. The major providers of Vehicle Carrier Services, including Respondents and their co-conspirators, own related shipping or transportation businesses they can utilize to provide additional services to clients, such as the operation of dedicated shipping terminals and inland transportation of Vehicles.

d. **Demand Elasticity to Lack of Substitutes**

QQQ. Demand for Vehicle Carrier Services is highly inelastic because there are no close substitutes. A RoRo Vessel is built specifically to transport the large, irregular shapes of wheeled vehicles, with the ability to adjust to various cargo shapes and sizes, and to enable those vehicles to be quickly and efficiently loaded and unloaded from the vessel. A RoRo Vessel is the only ocean vessel that has the carrying capacity for a large number of Vehicles.

RRR. Respondents' and their co-conspirators' primary customers—OEMs—cannot reasonably replace Vehicle Carrier Services with other services or reduce usage of these services, even if such services are substantially more expensive for OEM customers relative to other modes of transportation. Although Vehicles can theoretically be placed into containers and loaded by crane on to a container ship, this is not a reasonable substitute for Vehicle Carrier Services for the following reasons, *inter alia*:

- a. To transport a Vehicle inside a container, special inserts are typically placed inside the container to maximize the number of vehicles that can fit inside;
- b. Once a Vehicle is driven into a container, it needs to be secured within the container and then transported to a port to be loaded by crane onto a vessel;
- c. The steps outlined above take considerably more time than rolling Vehicles onto RoRo Vessels and are associated with additional costs;
- d. The cost of shipping a Vehicle in a container is typically higher than—and can be as much as two to three times the cost of—shipping that same Vehicle via a RoRo Vessel;

- e. Vehicles may be damaged when they are driven in and out of containers, and their close proximity in containers during shipping can also cause damage; and
- f. If multiple Vehicles are placed inside a container in a stacked fashion, there is a risk that oil or other fluids from one car can leak on other cars, also causing damage.

SSS. Additionally, compared to container shipping, providers of Vehicle Carrier Services have considerably fewer routes and limited geographical coverage. Vehicle Carrier Services to and from the United States and elsewhere in the world are generally limited to major shipping ports.

TTT. Moreover, because a container ship functions based on the uniformity of the cargo—everything must fit within the standardized containers—it is not conducive to transporting larger and more irregularly-shaped goods, such as some types of Vehicles—trucks and agricultural and construction equipment.

UUU. Therefore, a price increase in Vehicle Carrier Services does not induce customers, like GM, into using other types of cargo vessels or services. GM must employ Vehicle Carrier Services to facilitate the transport of Vehicles to and from the United States and elsewhere in the world, regardless of whether prices persist at supra-competitive levels. By allowing producers to raise prices without triggering customer substitution and lost sales revenue, inelastic demand facilitates collusion.

e. **Opportunities for Conspiratorial Communications**

VVV. The shipping industry has been characterized as a small world where many of the key figures know each other. Many employees of the Respondents and their co-conspirators have spent their entire careers in the shipping industry and had formed personal relationships with other key figures. Key employees have also transferred between the Respondent and co-conspirator companies, fostering familiarity and connections between professed competitors and facilitating high-level coordination for the conspiracy.

WWW. Respondents are members of several trade associations that provide opportunities to meet under the auspices of legitimate business. For example, several Respondents and their co-conspirators are members of the ASF Shipping Economics Review Committee. The Committee had meetings, including one in Tokyo on March 2, 2010, that was attended by representatives of several Respondents and their co-conspirators, including "K" Line and NYK Line.

XXX. Co-conspirators CSAV (through CSAV America), "K" Line America, MOL (through MOL (America), Inc.) and Respondents NYK America and WWL America are members of the United States Maritime Alliance, Ltd.

YYY. Respondents NYK America and WWL America and co-conspirators "K" Line and MOL (through MOL (America), Inc.) are members of the New York Shipping Association, Inc. and the Pacific Maritime Association.

ZZZ. Co-conspirators "K" Line, MOL, and CSAV and Respondents NYK Line and WWL are members of the World Shipping Council.

AAAA. Co-conspirators "K" Line, MOL, and CSAV and Respondent NYK Line were members of the European Liner Affairs Association, which was later absorbed by the World Shipping Council.

BBBB. Respondent NYK Line and co-conspirators "K" Line and MOL are members of the Japan Shipowners' Association, a trade association based in Japan.

CCCC. These associations—and the meetings, trade shows, and other industry events that stem from them—provided Respondents and their co-conspirators with ample opportunities to meet and conspire, as well as to perform affirmative acts in furtherance of the conspiracy. Respondents and their co-conspirators used industry events as opportunities to speak with competitors about rigging bids, reducing capacity, and other secret anticompetitive agreements.

DDDD. Respondents and their co-conspirators also routinely enter into vessel-sharing agreements whereby they reserve space on each other's RoRo Vessels. These sharing or chartering agreements are very common in the international maritime shipping industry.²

EEEE. While ostensibly entered into to optimize utilization and increase efficiency, such sharing and chartering agreements also provide opportunities for Respondents and their co-conspirators to discuss market shares, routes, and rates for Vehicle Carrier Services, and to enter into secret agreements to fix prices, rig bids, restrain capacity, and allocate customers.

7. GM in the United States Purchased Vehicle Carrier Services Directly from Respondents and their Co-Conspirators at Prices Illegally Raised Through Their Conspiracy

FFFF. During and after the Conspiracy Period, GM purchased Vehicle Carrier Services directly from providers of Vehicle Carrier Services, including Respondents and their co-conspirators. GM used such Vehicle Carrier Services to transport GM Vehicles to and from ports in the United States and elsewhere in the world, including ports in North America, South America, Europe, Africa, the Middle East, Asia, and Australia. Respondents' and their co-conspirators' unlawful conspiracy increased the prices of Vehicle Carrier Services purchased directly by GM in the United States. The illegally-inflated prices the Respondents and their co-conspirators charged GM for these Vehicle Carrier Services raised the costs to GM of shipping each GM Vehicle into or out of the United States and elsewhere in the world.

GGGG. Automobile OEMs, like GM, do not purchase Vehicle Carrier Services using published rates or tariffs. Rather, GM procurement teams based in the United States negotiated the rates, volume levels, and other conditions that governed GM's purchases of Vehicle Carrier Services. These negotiations typically consisted of:

- a. Bilateral negotiations to renew service contracts with providers of Vehicle Carrier Services;

² A "space charter" occurs when a shipping carrier charters space on another shipping carrier's vessel. A "time charter" occurs when a shipping carrier fully charters another vehicle carrier's vessel.

- b. Price change requests to change freight rates from providers of Vehicle Carrier Services; and
- c. Tenders whereby multiple carriers are invited to bid for a new or renewed contract award (an initial bid, followed by a second-round bid, and final negotiations).

HHHH. GM's procurement teams often established benchmark or target pricing that a provider of Vehicle Carrier Services would be encouraged to meet. These benchmark or target prices were determined by reviewing pricing from prior years for the same route, and looking at pricing for other routes GM used for Vehicle Carrier Services, as well as market factors and conditions.

IIII. Through this process, GM's United States procurement teams evaluated, qualified, and selected providers of Vehicle Carrier Services to service GM, drafted requests for quotes for Vehicle Carrier Services that would be purchased to transport GM Vehicles to and from the United States and elsewhere in the world, reviewed the responses to requests for quotes, negotiated rates, volumes, and other conditions with providers of Vehicle Carrier Services, selected who would win GM's Vehicle Carrier Services business, and awarded GM's Vehicle Carrier Services business.

JJJJ. Accordingly, the prices and other conditions for GM's Vehicle Carrier Services were negotiated and agreed upon between GM's United States procurement teams and providers of Vehicle Carrier Services, including Respondents and their co-conspirators. At all relevant times, GM in the United States directed the price, quantity, and other conditions of Vehicle Carrier Services purchased by GM to transport GM Vehicles. Moreover, GM in the United States issued payments directly to providers of Vehicle Carrier Services, including Respondents and their co-conspirators.

KKKK. As alleged in this Complaint, the prices of all of GM's purchases of Vehicle Carrier Services during the Conspiracy Period were artificially inflated by Respondents' and their co-conspirators' unlawful conduct. GM suffered the entire injury resulting from the

artificially-inflated price of Vehicle Carrier Services, and the injury from the purchase of these price-fixed Vehicle Carrier Services was ultimately borne by GM in the United States.

8. Accrual of Claim, Fraudulent Concealment, and Equitable Estoppel

LLLL. Prior to September 6, 2012, when the global investigation of Respondents' and their co-conspirators' misconduct was first publicly reported, a reasonable person under the circumstances would have believed the Vehicle Carrier Services to be a competitive industry and, thus, would not have been alerted to begin to investigate the legitimacy of Respondents' prices for Vehicle Carrier Services before that time.

MMMM. Conspiracies to fix prices, rig bids, restrain capacity, and allocate customers are, by their very nature, inherently self-concealing. As alleged in this Complaint, Respondents and their co-conspirators had secret in-person and other communications to rig bids, restrain capacity, allocate customers, and to otherwise fix, raise, maintain, or stabilize prices for Vehicle Carrier Services. These acts in furtherance of the conspiracy were affirmatively concealed and carried out in a manner specifically designed to avoid detection. As a matter of fact, if Respondents' and their co-conspirators' conspiracy was to successfully fix, raise, maintain, or stabilize prices, the conspirators needed to ensure that customers and competition authorities did not discover the existence of the conspiracy.

NNNN. To keep their conspiracy a secret, Respondents and their co-conspirators did not file their agreement and/or agreements with the Commission, as required by 46 U.S.C. § 40302. The Shipping Act's requirement that common carriers file agreements would ordinarily protect consumers of Vehicle Carrier Services because the filing requirement furthers the Shipping Act's purpose of promoting "competitive and efficient ocean transportation." 46 U.S.C. § 40101(4). Given the Act's requirement that agreements be filed, GM had no reason to suspect that an unlawful anticompetitive agreement and/or agreements had been reached.

OOOO. Despite engaging in the secret anticompetitive conduct alleged herein, prior to the time when the investigations by the antitrust regulators became public, neither Respondents nor their co-conspirators disclosed to GM that they were engaging in the unlawful conduct alleged in

this Complaint. GM did not discover and could not have discovered the alleged conspiratorial agreement and/or agreements at an earlier date by the exercise of reasonable diligence.

PPPP. Aside from engaging in secret communications and failing to disclose their unlawful conduct, Respondents and their co-conspirators also concealed the conspiracy alleged in this Complaint by engaging in other acts to create the illusion of competition. For example, as alleged in this Complaint, Respondents and their co-conspirators at times used complementary bidding (also known as “cover” or “courtesy” bidding). Complementary bidding occurred when a Respondent or co-conspirator requested that another Respondent or co-conspirator submit a bid that was higher than the bid of the Respondent or co-conspirator that made the request. Such complementary bids were intended to give the appearance of genuine competitive bidding to conceal Respondents’ and their co-conspirators’ secretly-inflated prices.

QQQQ. Respondents and their co-conspirators also affirmatively concealed their conspiracy by falsely claiming that the Vehicle Carrier Services market was “competitive” and by offering pretextual reasons for price increases. This created the illusion that prices were determined as a result of market-based forces, such as increased demand and tight supply. For example, Respondents and their co-conspirators made the following representations:

- a. CSAV repeatedly stated that it operated in a very competitive market for Vehicle Carrier Services. CSAV Annual Reports: Year 2003 at 10, 23; Year 2005 at 19, 42; Year 2006 at 15, 149; Year 2007 at 15, 39; Year 2008 at 17, 35; Year 2009 at 17, 36; Year 2010 at 15, 35; Year 2011 at 15, 22; Year 2012 at 19.
- b. “K” Line stated that it competed with many shipping companies and promised to comply with applicable laws of the international community. “K” Line Annual Report 2008, at 55; “K” Line Annual Report 2009, at 1.
- c. MOL stated that competitive costs were the essence of its excellence. MOL Annual Report 2000, at 9.

- d. NYK explained that prices were increased were the result of increased demand and that it competed globally with other Vehicle Carrier Services providers. NYK Line Annual Report 2009, at 8; NYK Line Annual Report 2012, at 102.
- e. WWL stated that its Vehicle Carrier Services were affected by general trends in the world economy and that it operated in a tight market with fierce competition. Wilh. Wilhelmsen ASA Annual Reports: Year 2002 at 15; Year 2004, at 9; Year 2009, at 11; Year 2010, at 19-20.

RRRR. Because Respondents and their co-conspirators kept the unlawful conduct alleged in this Complaint secret, GM was not aware of the unlawful conduct alleged in this Complaint at any point in time before the investigations by the antitrust regulators became public on September 6, 2012. Accordingly, GM did not know before that time that it was paying supra-competitive prices for Vehicle Carrier Services during the Conspiracy Period.

SSSS. Aside from the fact that Respondents and their co-conspirators made deliberate efforts to conceal their unlawful conduct, no events raised, or should have raised, suspicions on GM's part that the Respondents and their co-conspirators were engaging in a conspiracy to fix prices and allocate customers for Vehicle Carrier Services until certain Respondents were raided by competition authorities in September 2012.

TTTT. Indeed, GM used a method of purchasing Vehicle Carrier Services that caused it to believe in good faith at the time that it was receiving competitive prices for Vehicle Carrier Services that it purchased from one or more of the Respondents and/or their co-conspirators. As part of this process, GM invites more than one provider of Vehicle Carrier Services to bid for a new or renewed contract award. GM next evaluates the quotes submitted by providers of Vehicle Carrier Services, including by comparing these bids to historical rates. GM then invites certain providers of Vehicle Carrier Services to submit second-round bids, and lastly, to participate in final negotiations. This process relied on Respondents' and their co-conspirators' historic rates, as well as Respondents' and their co-conspirators current quotes, all of which were artificially inflated by the conspiracy. Thus, unfortunately, as a proximate and direct result of

Respondents' and their co-conspirators concealment of their conduct, GM was justifiably unaware of this conduct, despite its due diligence. At no point during the Conspiracy Period did any of the Respondents or their co-conspirators inform GM that they had been conspiring to rig bids or increase prices GM paid for its Vehicle Carrier Services.

UUUU. Thus, none of the facts or information available to GM, if investigated with reasonable diligence, would have led to the discovery of the conspiracy alleged in this Complaint prior to the time when the investigations by the antitrust regulators became public.

VVVV. Accordingly, Respondents and their co-conspirators engaged in a successful anticompetitive conspiracy concerning Vehicle Carrier Services, which they affirmatively concealed.

WWWW. By reason of the foregoing, the running of any statute of limitations has been tolled with respect to the claims that GM has alleged in this Complaint.

9. Effect on U.S. Commerce

XXXX. During the Conspiracy Period, Respondents and their co-conspirators collectively controlled a majority of the market for Vehicle Carrier Services, globally, in the United States.

YYYY. The conspiracy alleged herein has affected billions of dollars of United States commerce.

ZZZZ. During the Conspiracy Period, each Respondent and co-conspirator, or one or more of its subsidiaries and/or affiliated joint ventures, sold Vehicle Carrier Services throughout the United States and elsewhere in the world in a continuous and uninterrupted flow of interstate commerce and foreign commerce.

AAAAA. Respondents and their co-conspirators have each used instrumentalities of interstate commerce to sell Vehicle Carrier Services throughout the United States.

BBBBB. Activities of Respondents and their co-conspirators, including the marketing and sale of Vehicle Carrier Services, have taken place in the United States; have been intended to have and have had a direct, substantial, and reasonably foreseeable anticompetitive effect upon interstate trade and commerce in the United States and upon import commerce with foreign

nations; and have caused injury in the United States. Indeed, Respondents' and their co-conspirators' anticompetitive conduct directly targeted GM's purchase of Vehicle Carrier Services.

CCCCC. Respondents' and their co-conspirators' conspiracy and conduct described herein have directly and substantially affected commerce in that Respondents and their co-conspirators have deprived GM and other entities of the benefits of free and open competition in the purchase of Vehicle Carrier Services in the United States. GM directly purchased Vehicle Carrier Services in the United States, and GM paid more for such services than it would have paid under conditions of free and open competition.

V. VIOLATIONS OF THE SHIPPING ACT AND COMMISSION REGULATIONS

By reason of the facts stated in the foregoing Parts I-IV of this Complaint, which are incorporated by reference as if fully set forth herein, GM has been and is continuing to be subjected to injury as a direct result of violations of the Shipping Act as follows:

1. 46 U.S.C. § 40302(a)

Beginning at a time presently unknown to GM, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents and their co-conspirators entered into an agreement and/or agreements "between or among ocean common carriers" to "discuss, fix, or regulate transportation rates" or "control, regulate, or prevent competition in international ocean transportation" that were required to be filed with the FMC pursuant to 42 U.S.C. §§ 40301(a) and 40302(a). This agreement and/or agreements included agreements to: (1) rig bids for the sale of for Vehicle Carrier Services in the United States and elsewhere in the world; (2) charge prices at certain levels and otherwise to fix, increase, maintain, and/or stabilize prices of Vehicle Carrier Services sold in the United States and elsewhere in the world; (3) refrain from competing by refusing to offer Vehicle Carrier Services sold in the United States and elsewhere in the world at prices below the agreed-upon price; (4) allocate customers for Vehicle Carrier Services in the United States and elsewhere in the world; and (5) restrain capacity for Vehicle Carrier Services sold in the United States and elsewhere in the world.

2. 46 U.S.C. § 41102(b)(1)

Beginning at a time presently unknown to GM, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents and their co-conspirators operated under an agreement and/or agreements "between or among ocean common carriers" to "discuss, fix, or regulate transportation rates" or "control, regulate, or prevent competition in international ocean transportation" and this agreement and/or agreements were not filed with the FMC and did not become effective. Among the agreed-upon conduct were agreements to: (1) rig bids for the sale of for Vehicle Carrier Services in the United States and elsewhere in the world; (2) charge prices at certain levels and otherwise to fix, increase, maintain, and/or stabilize prices of Vehicle Carrier Services sold in the United States and elsewhere in the world; (3) refrain from competing by refusing to offer Vehicle Carrier Services sold in the United States and elsewhere in the world at prices below the agreed-upon price; (4) allocate customers for Vehicle Carrier Services in the United States and elsewhere in the world; and (5) restrain capacity for Vehicle Carrier Services sold in the United States and elsewhere in the world. Respondents and their co-conspirators operated under this unfiled agreement and/or agreements that had not become effective in violation of 46 U.S.C. § 41102(b)(1).

3. 46 U.S.C. § 41102(c)

Beginning at a time presently unknown to GM, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents failed to establish, observe and enforce just and reasonable regulations and practices relating to receiving, handling, storing or delivering property. Respondents and their co-conspirators violated this section through their intentional conduct designed to unreasonably interfere with GM's international transportation of property.

4. 46 U.S.C. § 41103(a)(1) and (2)

Beginning at a time presently unknown to GM, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents and their co-conspirators knowingly disclosed, offered, solicited, and received information concerning the nature, kind,

quantity, destination, consignee, or routing of property tendered to Respondents and their co-conspirators. This information was shared without GM's consent and was used to the detriment of GM in that GM was forced to pay supracompetitive prices for Vehicle Carrier Services. Respondents and their co-conspirators participated in meetings, conversations, and communications with one another regarding customers, capacity, and prices to be charged for Vehicle Carrier Services in the United States and elsewhere in the world. Further, Respondents and their co-conspirators met with one another to conceal the existence of their conspiracy and further their illegal anticompetitive conduct.

5. 46 U.S.C. § 41104 (10)

Beginning at a time presently unknown to GM, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents, either alone or in conjunction with any other person, directly or indirectly, and their co-conspirators unreasonably refused to deal and negotiate. In allocating customers—such as GM—every Respondent or co-conspirator that agreed to “respect” their competitors’ business and not pursue GM as a customer unreasonably refused to deal or negotiate with GM in good faith.

6. 46 U.S.C. § 41105(1) and (6)

Beginning at a time presently unknown to GM, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents and their co-conspirators engaged in concerted action resulting in an unreasonable refusal to deal and negotiate. In allocating customers—such as GM—every Respondent or co-conspirator that agreed to “respect” their competitors’ business and not pursue GM as a customer unreasonably refused to deal or negotiate with GM in good faith.

Further, beginning at a time presently unknown to GM, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents and their co-conspirators’ secret agreement and/or agreements “allocate[d] shippers among specific carriers” and “prohibit[ed] a carrier that is a party to the agreement from soliciting cargo from” GM.

7. **46 C.F.R. § 535.401 et seq.**

Beginning at a time presently unknown to GM, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents violated the Commission's regulations supporting the Shipping Act requirements for filing agreements.

8. **Other Violations**

Respondents may have committed additional violations of the Shipping Act that may be revealed in the course of this proceeding and which will be incorporated herein by reference.

VI. INJURY SUFFERED BY GM

By reason of the facts stated in the foregoing paragraphs, GM has been subject to injury in amounts to be determined as a direct result of the violations by Respondents of 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41103(a)(1) and (2), 41104(10), 41105(1) and (6), and 46 CFR § 535.401, *et seq.* Respondents and their co-conspirators succeeded in allocating customers, rigging bids, restraining capacity, and otherwise fixing, raising, maintain, or stabilizing prices for Vehicle Carrier services. These unlawful and secret agreements have caused price competition in the sale of Vehicle Carrier Services to be unlawfully restrained, suppressed, and/or eliminated throughout the world. And specifically, GM has been deprived of the benefits of free, open, and unrestricted competition and paid supracompetitive prices for Vehicle Carrier Services. GM has therefore been injured in its business and property because it has paid more for Vehicle Carrier Services than it would have paid in a competitive market.

VII. PRAYER FOR RELIEF

WHEREFORE, GM prays:

That Respondents be required to answer the charges herein;

That after due investigation and hearing Respondents be found to have violated 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41103(a)(1) and (2), 41104(10), 41105(1) and (6), and 46 CFR § 535.401, *et seq.*, and such other provisions as to which violations may be proved hereunder;

That GM be awarded reparations in a sum to be proven under 46 U.S.C. § 41305, with interest (46 U.S.C. § 41305(a)) and reasonable attorney's fees (46 U.S.C. § 41305(b));

That GM be awarded double its proven actual injury under 46 U.S.C. § 41305(c) because Respondents and their co-conspirators violated 46 U.S.C. §§ 41102(b) and 41105(1);

That Respondents be found jointly and severally liable for the conduct alleged herein, including that of their co-conspirators; and

That such other and further order or orders be made as the Commission determines to be proper in the premises.

GM requests a hearing, and that the hearing be held in Washington, District of Columbia.

Dated: September 2, 2015

Respectfully submitted,



Daniel A. Sasse
Chahira Solh
Ryan C. Wong
CROWELL & MORING LLP
3 Park Plaza, 20th Floor
Irvine, California 92614
Telephone: (949) 263-8400
Facsimile: (949) 263-8414
E-mail: dsasse@crowell.com
csolh@crowell.com
rwong@crowell.com

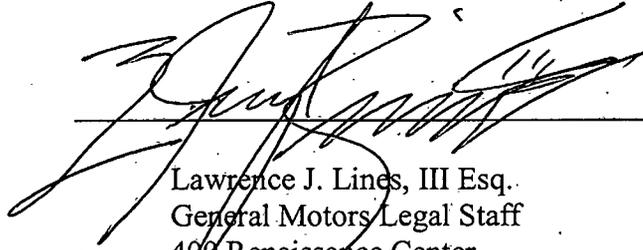
Kent A. Gardiner
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 624-2500
Facsimile: (202) 628-5116
E-mail: kgardiner@crowell.com

Eliot J. Halperin
Deana E. Rose
MANELLI SELTER PLLC
2000 M Street, N.W., Suite 760
Washington, D.C. 20036
Telephone: (202) 261-1000
Facsimile: (202) 887-0336
E-mail: ehalperin@mdslaw.com
drose@mdslaw.com
Counsel for Complainant General Motors LLC

VERIFICATION

Lawrence J. Lines, III being first duly sworn on oath deposes and states that he is a senior attorney in the Office of the General Counsel of General Motors LLC; that he has read the foregoing Complaint and that the facts stated therein he believes to be true on information and belief and upon information received from others.

Date: August 31, 2015



Lawrence J. Lines, III Esq.
General Motors Legal Staff
400 Renaissance Center
Detroit, Michigan 48243

Subscribed and sworn to before me, a notary public in and for the State of Michigan, this 31st of August 2015.



Notary Public:

My Commission Expires: January 5, 2020

TARI R. NIKKILA
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF WAYNE
My Commission Expires Jan. 5, 2020